IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 217 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

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GATORBHAI BHIKHABHAI PATEL - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR KJ SHETHNA for Appellant(s) : 1,
MR AJ DESAI, LD.APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 10/11/2006

ORAL JUDGMENT

1. The present appeal is preferred by the appellant-orig. accused (hereinafter referred to as 'the appellant') under Section 374 of the Code of Criminal Procedure, 1973, who has been held guilty by the learned Special Judge, Surendranagar, vide his judgment and order

dated 07th March, 1990 for the offences punishable under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act (hereinafter referred to as 'the Act'). At the conclusion of the trial of Sessions Case No.2 of 1987, the appellant is sentenced to undergo rigorous imprisonment for 5 (five) years and a fine of Rs.500/- (Rupees Five Hundred only); in default of payment of amount of fine to undergo rigorous imprisonment for three months. The appellant is also held guilty for the charge punishable under Section 161 of the Indian Penal Code and for the same, he is asked to undergo rigorous imprisonment for one year. As per the operative part of the order under challenge, the substantive sentence is ordered to run concurrently.

2. The judgment and order under challenge has been assailed on various grounds mentioned in paragraph no.7 of the memo of the appeal and Shri K.J. Shethna, learned senior counsel appearing for the appellant, has taken the Court through the main grounds of challenge

and the relevant part of the judgment and order assigning reasons for recording conviction. The appellant being aggrieved and dissatisfied with the legality and validity of the judgment and order of conviction and sentence, has assailed the finding recorded by the learned trial Court by way of this appeal on the grounds mentioned in the aforesaid paragraph no.7. I have heard Shri Shethna, learned senior counsel appearing for the appellant and Shri A.J. Desai, learned Additional Public Prosecutor, appearing on behalf of the respondent-State at length; and both of them have taken this Court through the oral as well as documentary evidence led during the course of trial.

3. To appreciate the rival contentions which have been placed before this Court, it would be necessary to state the facts of prosecution case in brief which were placed before the learned trial Court :

3.1 The complainant-Ramabhai Tapubhai is an owner of about 30 vighas of land situated in the sim of village Zinzuda, Tal. Chotila and he was

cultivating the said land. According to the complainant, about 25 years prior to the date of incident in question, his father had purchased the land in question from one Dana Deva.

3.2 The father of the complainant died before about 20 years ago from the date of incident in question and the complainant being the eldest amongst his brothers, he and his family members were cultivating the land purchased by the father of the complainant. The name of the father of the complainant was inserted in the Village Form Nos.7 and 12 being a person in possession of the land and after the death of father of the complainant, the name of complainant was introduced/mutated in the said Form Nos.7 and 12, and the complainant was paying the State revenue being cultivator of the land.

3.3 After sometime, the complainant learnt that the land being cultivated by him and his family stood in the name of Chhana Dana i.e. son of original owner Dana Deva. The dispute

between the said two families had seen the light of Court room and there was a litigation between the parties. When the complainant learnt about the development, he approached the appellant, who was at the relevant point of time, Talati-cum-Mantri of village Zinzuda and obtained copies of revenue records from him and he could see that the land stood in the name of Chhana Dana.

3.4 It is the say of the complainant that at the instance of the appellant, he gave an application in duplicate to effect the change of name and to see that his name is re-entered in the Panipatra i.e. Village Form Nos.7 and 12. One copy was sent to the Mamlatdar and one was given to the appellant. Both the copies were bearing thumb impression of the complainant and it is alleged that it was written by some lawyer and when the complainant inquired from the appellant as to when his name will be entered in the revenue records, the appellant demanded an amount of Rs.500/- from him and the day was fixed for payment and the complainant was asked to come

to the residence of the appellant; and the complainant was not inclined to make any such payment by way of illegal gratification. Hence, he had consulted one Arjun Bhima of his village and thereafter, he had gone to Rajkot for lodging the complaint and/or to ventilate his grievance against the demand of illegal gratification by the appellant. As the complainant was asked to pay the amount on Tuesday, he had gone to Rajkot on Tuesday. He had reached to the residence of one of his relatives and the said host at Rajkot had arranged for the complainant so that he can reach to the office of the Anti-Corruption Bureau (hereinafter referred to as 'the ACB').

3.5 It emerges from record that Rajkot is having office of the Assistant Director of ACB and the complainant had reached that office. The said village Zinzuda falls within the jurisdiction of Taluka Chotila of District Surendranagar. It emerges that Surendranagar District is having its independent ACB Police Station and one Shri Gor at the relevant point of time was the Police Inspector, ACB Police

Station at Surendranagar. Undisputedly, Shri Gor was present at Rajkot. He has been there at Rajkot in the office of the Assistant Director of ACB for some other work on the call given to him. The said Shri Gor on instructions given by the Assistant Director of ACB took the complaint of the complainant-Ramabhai Tapubhai at 14-00 hrs. at Rajkot.

3.6 Thereafter, he arranged for two panchas from City of Rajkot for the trap in question. It is the say of the prosecution that on arrival of both the panchas, the complainant had explained the details of his grievance and the contents of his application. Thereafter, the said Shri Gor, Police Inspector of ACB, Surendranagar, completed the formalities of the first part panchnama in furtherance of the arrangement of the trap. This complaint is at Ex.24 and the same has been tendered in evidence by the complainant, who has been examined as PW-1 at Ex.23. Both the panchas were instructed to act as narrated in the panchnama and the complainant was given the muddamal currency notes of Rs.500/- of the

denomination of Rs.100/- each, stained with anthracene powder and he was instructed that unless the amount is specifically demanded by the appellant, he shall not touch the same and shall pass the same to the appellant when demanded by him. He was also instructed to signal after the same by taking up the towel which the complainant had put on his head. Thereafter, the complainant as well as both the panchas proceeded to town Chotila with the raiding party headed by Shri Gor.

3.7 It is the say of the prosecution that the complainant was asked to come to the residence of the appellant but it is alleged that when they were proceeding towards the residence of the appellant in the late evening between 07-00 p.m. and 07-30 p.m., the complainant saw the appellant sitting in a hotel/ tea stall running in the name and style of “Manhar Tea Stall” in a small room admeasuring 12' x 15' ft. Some conversation had taken place between the appellant and the complainant. By that time, as the panch no.1 was asked to be with the complainant, had entered with the

appellant and he had also heard the said conversation and when the appellant asked as to whether the complainant had brought the amount, the complainant gave the muddamal currency notes to the appellant as per the instructions.

3.8 According to the prosecution, the muddamal currency notes knowing it to be the amount of illegal gratification were accepted by the appellant and the same were counted by him and also pocketed by him in the pocket of his open shirt with buttons, popularly known as 'bu-shirt' (hereinafter referred to as 'shirt'). Meanwhile, the complainant and the appellant had enjoyed a cup of tea. But on acceptance of amount, the complainant and the panch no.1 had come out of the said 'Manhar Tea Stall' and a signal as instructed was given and the appellant was cornered. It is alleged that both the hands of the appellant including the finger tips were found stained with anthracene powder when they were brought under the light of ultraviolet lamp. On the direction of Shri Gor, Police Inspector, ACB, the panch no.1 had

taken out the muddamal currency notes from the pocket of the appellant. The numbers of the said currency notes were tallying with the numbers mentioned in the first part of the panchnama and the hands of panch no.1 were also found stained with anthracene powder as he had taken out the currency notes from the pocket of the appellant at the instance of the Police Inspector Shri Gor.

3.9 When the appellant, complainant and panch no.1 were inside the said tea stall, Shri Gor, Police Inspector, asked the panch no.2 to inquire and to peep into the said hotel/ tea stall, and Shri Gor was informed by the panch no.2 that the appellant, complainant and panch no.1 are there inside the hotel but the panch no.2 was not able to give further details as he was not able to overhear the conversation, etc. The appellant thereafter was taken to his residence on completion of second part of panchnama and it was alleged that the appellant tendered a copy of the application given by the complainant to him for rectification in the mutation entry, which was

there in Village Form Nos.7 and 12. The appellant was also passed a receipt for the muddamal currency notes recovered from him. Thereafter, the ACB Police Inspector Shri Gor recorded the statement of persons including the said Shri Arjun Bhima, and the person who was present in the Manhar Tea Stall at the relevant point of time and other witnesses including the person serving in the office of the Mamlatdar, Chotila.

4. After evaluating the evidence on record, the learned trial Judge has held that the prosecution has successfully proved its case beyond doubt. But according to Shri Shethna, this finding is not legal because the learned trial Judge has ignored certain improvements and contradictions and other important salient features which were otherwise required to be considered in a case under the Prevention of Corruption Act. In certain type of prosecution case, the police and the prosecuting agency is leading stereotype evidence and in such type of prosecution cases, the Courts are supposed to consider the backbone of the case as well as the

smallest deviation or improvement made by the prosecution witnesses. The infirmities emerging from record even from the conduct of any of the prosecution witnesses should not be ignored. The learned trial Judge on the totality of facts and circumstances of the case ought to have observed that the evidence of the complainant is not reliable or at least it was not safe to place full reliance on the version of the complainant. Shri Shethna has taken me through the deposition of the complainant at Ex.23. According to Shri Shethna, the appellant when had denied in respect of any scope to play with the entry which was there in the name of Chhana Dana, he has got the trap in question arranged with the help of Arjun Bhima, who belongs to village Zinzuda. The said Arjun Bhima had no inimical terms with the appellant, so there was no need for the complainant to go to Rajkot at the instance of Arjun Bhima when Surendranagar has permanent establishment of ACB Police Station. It is submitted that the learned trial Judge has also ignored one strange situation that the Police Inspector of ACB Police Station, Surendranagar, was present at Rajkot when the

complainant had reached to the office of the Assistant Director of ACB, Rajkot. When it emerges from record that the said Shri Gor was asked to remain present at Rajkot ACB office on telephonic instructions sent on previous evening, it was possible for the learned trial Judge to observe that the trap was pre-arranged on the previous evening and the complainant had gone to Rajkot as per the time given to him. The complainant has not even cared to give the name of the person who had arranged for a rickshaw for him so that the complainant could reach to the office of the ACB at Rajkot. There was no need for any officer from the ACB Rajkot to intimate Shri Gor to come to Rajkot with instructions to lay down a trap. Shri Gor was asked to come to Rajkot to discuss about 2 to 4 ACB pending cases, is not an acceptable version. When Shri Manjariya, Incharge of ACB Police Station, Rajkot, in whose office the complaint was written and taken by Shri Gor, has neither been examined nor the prosecution has led any evidence of the Assistant Director of ACB at Rajkot. The say of Shri Gor could not have been safely used as corroborative piece of evidence

and for believing the version of the complainant. The complainant has also not satisfactorily explained that though he was specifically asked to go to the residence of the appellant, why he had opted to go to the hotel/ tea stall with Panch no.1 where the appellant was allegedly sitting with Panch no.1. Reading the relevant paragraph nos.5, 6 and 7 of the deposition Ex.23, and the cross-examination made by the defence counsel, as to how and why the complainant took the panch no.1 to the hotel where the appellant was sitting, it is argued that the street leading to the residence of the appellant was falling earlier if one proceeds towards the eastern direction from the bus-stand of town Chotila. The complainant or the panch no.1 could have taken the left turn towards the residence of the appellant but leaving gaps of more two to three streets, which appears to be south-north side, both of them could have reached to the hotel/tea stall. There is nothing on record to show that the complainant was aware about the normal place of sitting of the appellant in the evening time. This act of complainant and the panch no.1 indicates that

the raiding team was hunting the appellant as probably he was not found at his residence. Of course, the complainant has denied the suggestion but it is the say of the appellant that the complainant had attempted to pass the muddamal currency notes forcibly, even then the appellant did not accept the same. The complainant has also denied that at the instance of the ACB Inspector Shri Gor, the currency notes were planted in the pocket of the appellant. When an important independent witness, who was present at the tea stall has not been examined by the prosecution, the learned trial Judge ought to have said that the explanation given by the appellant of planting of muddamal currency notes in his pocket is a probable explanation. Normally, a complainant would not know the exact location of the residence of the Talati-cum-Mantri and unless the complainant is informed about the normal place of sitting of the appellant in the evening time, he could not have reach to the said hotel/tea stall. As the complainant was disturbed by the civil litigation taken up by the said Chhana Dana, the complainant was keen

to pressurise the appellant to see that his name is replaced vice Chhana Dana, otherwise a person who has made an application on 17th September, 1986 would not arrange for an ACB trap within a couple of days. The date of trap is 23rd September, 1986. This indirectly indicates that the appellant must have informed him that he is unable to help him in introducing his name into Form Nos.7 and 12 and, therefore, by using the influence of one Arjun Bhima, the complainant decided to go to Rajkot for filing a false case. It is in evidence of the complainant that this Arjun Bhima is also a Talati-cum-Mantri i.e. a person in the same department and in the same cadre serving in some other village but he is the resident of village Zinzuda.

5. It is further submitted by Shri Shethna that there is no evidence which can be said to be of convincing nature that the marks of anthracene powder were found on both the hands or the shirt put on by the appellant or at any other place because the complainant had described the stains as greenish-yellowish-florescent type of marks on the finger tips and shirt of the appellant.

The description of the very marks is materially different when the evidence of panch no.1 is read. None of these witnesses has ever said that similar type of marks which were seen by them at the time of drawing first part of panchnama at Rajkot ACB Office, were found on the hands or shirt of the appellant. The Apex Court has observed that because of this type of situation and the scope of confusion in giving the description of anthracene powder marks by the appellant and when there is no scope to cross-check the trustworthiness of this part of evidence of a trap witness, the anthracene powder normally should not be used in arranging the ACB traps. The use of anthracene powder has been deprecated by this Court as well as the Apex Court. When such a confused situation was there, the learned trial Judge ought not to have raised any inference against the appellant by saying that acceptance of muddamal currency notes as illegal gratification and the finding of the learned trial Judge is bad on this count. There is no reference of the name of the Assistant Director of ACB at Rajkot by the complainant though he has been very much

referred to by the ACB Inspector Shri Gor. Even the statement of the Assistant Director of ACB has not been recorded in the present case. It is argued by Shri Shethna that as this trap was pre-arranged, not only Rajkot and Rajkot officials were selected by the complainant but panchas were also selected from Rajkot; otherwise it was not impossible for ACB Inspector Shri Gor to select the panchas either from Chotila or Surendranagar. One panch is from Road Transportation Office (RTO) and the another is from the Food and Drugs Control and Analysis Department, running laboratory at Rajkot. It is alleged that the offices of the ACB and Food and Drugs Control are in the same building. So the version of panch no.1 ought not to have been accepted as gospel truth or any reliable corroborative piece of evidence to the complainant. The important contents of the panchnama have not been proved specifically by panch no.1 and panch no.1 has also not specifically explained as to why he had agreed with the complainant to go to hotel though they were instructed to go to the residence of the appellant. On referring to the deposition of the

panch no.1 (Ex.28) closely and panchnama (Ex.29) tendered by this witness in evidence, Shri Shethna has submitted that the panch witness has shown attitude to help the prosecution from the very beginning. The Government servants have tendency to support the prosecution case as it is. A sarcastic remark has been made by Shri Shethna that ACB Inspector Shri Gor has selected panchas, especially panch no.1 from RTO Department. Of course, he has not expressly said that certain departments are known for rampant corruption, but the Court was able to get the hint given by Shri Shethna but it would not be either legal or proper to comment on this argument and the Courts are supposed to read and scrutinise the evidence led during the course of trial. No witness should be criticised or condemned merely because of his caste, creed, class or department. The witness was tendered by the prosecution and his version was subject to close scrutiny and cross-examination by the defence side. On close reading of the evidence of panch no.1 in the background of the details of the panchnamas (Exs.29, 30 and 31), the Court is of the view that this witness has stood the

test of truth in the cross-examination also. No material infirmity in the nature of contradictions or improvements is found. On the contrary, the said panch witness has acted practically as shadow of the complainant and he was supposed to behave like that as per the instructions given to him. The panch no.1 had not even seen the appellant earlier, so obviously he was to follow the complainant. Only question which was required to be seen closely by the panch no.1 independently as alleged in the complaint explained to him before drawing first part of panchnama was whether the present appellant makes any demand express or implied either oral or by gesture of illegal gratification, and if panch no.1 is able to listen then he should listen, if he is able to see, he should see and if possible to do both, he should do both and should also see the passing of currency notes from the complainant to the appellant, if such a stage comes. This is the crucial stage of panchnama. Practically there is no as such first part of panchnama. The first part of panchnama is assailed on the ground that it is drawn at

the place other than usual place where such panchnama could have been drawn by selecting favourable panchas. It is settled law that when the first part of panchnama is not found trustworthy or reliable, the strength of of second part of panchnama would automatically be weak comparatively. There is no material infirmity in the first part of panchnama, except the points which have been stated by Shri Shethna mentioned earlier and in that background, if the second part of panchnama is evaluated, it is not possible for him to say that the story unfolded by the panch no.1 as to the demand made by the appellant in a tea stall is untrustworthy. If the suggestion made to the complainant as well as panch no.1 during the course of cross-examination is considered in the background of the stand taken by the appellant in the statement under Section 313 of the Code of Criminal Procedure, 1973, the theory of forcible planting of currency notes is also not found probable. It has come during the course of cross-examination of ACB Inspector Shri Gor that panch no.2 had been posted near the hotel/ tea stall to peep inside the same so that he could

ascertain the happenings and the panch no.1 as well as the complainant along with the appellant were there in the tea stall for 5 to 7 minutes. Thereafter, the complainant and the panch no.1 had come out from the said tea stall. This time gap, if is considered, is found sufficient for consuming a cup of tea if offered or one wishes to enjoy. The panch no.1 had not consumed any tea. There is no reference in the second part of panchnama as to whether the cups and soccers were brought under the scan of ultraviolet lamp or not. But as per the story unfolded by the complainant and panch no.1, it appears that the muddamal currency notes were passed after enjoying tea because immediately thereafter the panch no.1 and the complainant had come out of the tea stall. The said tea stall is not a big hotel. Of course, it has been described as hotel but it emerges from record and pointed out by Shri A.J. Desai, learned Additional Public Prosecutor, it was a small room type tea stall or restaurant admeasuring 12'x15' ft. It is true that the evidence of the tea stall person could have drawn more light to the event that had taken place in the tea stall within 5 to 7

minutes. But the evidence which could have added more strength to the case of the prosecution is not there, whether can be considered as an infirmity, is the question to be replied by the Court and in ennumber of cases, this Court and the Apex Court has observed that the prosecution is not liable to examine all the possible witnesses; on the contrary, duplication or triplication has not been appreciated. In the present case, the evidence of complainant and panch no.1 was found sufficient to prove the necessary facts. The police may not name all the witnesses whose statements have been recorded or the Public Prosecutor may not examine all those witnesses. Some infirmity or material contradiction could have tempted the learned Additional Public Prosecutor to call the tea stall person. Unless the additional strength is required to be proved, it is not necessary for the Public Prosecutor to examine all the witnesses whose statements have been either recorded by the police or have been named in the final report under Section 173 of the Code of Criminal Procedure, 1973.

6. It is rightly submitted by Mr.A.J. Desai, learned Additional Public Prosecutor, that merely pointing out a finger on a person who has been named as Arjun Bhima in this case would not raise any doubt against the credibility of the complainant. Normally, a person serving in the same department would not ill-advice anybody unless specific or grave animosity exists. No documentary evidence or any type of evidence is brought on record to show that the said Arjun Bhima was the enemy and there was animosity between Arjun Bhima and appellant and therefore, he used the complainant in implicating the appellant in a serious offence like the present one. No detailed questions have been asked to the complainant. It is true that the statement of Arjun Bhima was recorded by ACB Inspector Shri Gor. If Arjun Bhima had advised the complainant to go to Rajkot or at the office of the Assistant Director of ACB at Rajkot, according to him, the advice cannot be said to be an ill-advice or any advice against the appellant. It is true that Arjun Bhima could have asked the complainant to go to Surendranagar instead of Rajkot. But if somebody

serving in the police department is knowing the complainant stationed at Rajkot, and the person goes to the office of the superior i.e. Assistant Director of ACB, it cannot be said to be a strange conduct. This conduct would not make the complainant a condemnable witness or his version a doubtful version. The complainant has attempted to explain that as Rajkot is near, he had selected Rajkot. Of course, the complainant had not said anything that he had met the Assistant Director of ACB. The complainant might not be even knowing the status or authority in whose office he had entered. But the ACB Inspector Shri Gor has said and the Court has no reason to disbelieve this part of deposition of Shri Gor that the complainant had initially approached the Assistant Director of ACB. Undisputedly, the complaint has been recorded at Rajkot at 14-30 hours. For the sake of argument, if it is accepted that the ink used in inserting the time is comparatively darker than the other writings, as pointed out by Shri Shethna would not make the entire complaint doubtful because there is no effective cross-examination and when the appellant was

trapped between 07-30 and 07-45 p.m. on 23rd September, at the most it can be said that the complaint must have been recorded in early hours on 23rd September. The report under Section 157 of the Code of Criminal Procedure, 1973, was despatched to the learned Special Judge on 23rd September, 1986 and it had reached to the Court of learned Special Judge on 24th September at 10-00 a.m. When the third part of panchnama was concluded in the late hours i.e. after 09-00 p.m., the despatch of the FIR on 23rd September, adds strength to the genuineness of the complaint. There is no allegation of inserting ante-time in the complaint even to Shri Gor. It is relevant to note that the handwritten complaint taken up by Shri Gor at Rajkot has been written by a fountain pen and darker figures found in the complaint if are compared with some other words, “ “(and)* in the eleventh line, “ “(in which)* in the fourteenth line,“ “(Chhana)* in the fifteenth line and one or two letters on the reverse side of the complaint clearly indicate that there is no scope to raise doubt as to the time mentioned in reference to the recording of the complaint

at Rajkot. The certified copies of the village form nos.7 and 12 collected during the course of investigation, clearly reveal that the name of Rama Tapu was there as a person occupant/in possession of agricultural land admeasuring 6-49.52 Are bearing Survey No.67. The village Form nos.7 and 12 is in two parts. There is no reference of name of Rama Tapu in Form no.7, but he is shown as person occupant in Form no.12 for the years 1973-74 to 1980-81. The certified copies of the village Form No.7/12 of the very land for the years 1981-82 to 1986-87 are available (Exs.18 to 20) and from the year 1981-82, the names are found changed and since 1985-86, the name of Chhana Dana is shown in the village Form no.12. If these entries are considered, the say of complainant gets strength that he came to know about the change in the name in the village Form no.12 and, therefore, he approached the Talati-cum-Mantri. In the same way, the copy of the application allegedly recovered from the appellant, when his house was searched as well as the document referred to Ex.31 talks about some application given by the complainant to Mamlatdar and appellant to see

that his name is re-entered in the village form no.12. It is not the say of the complainant that his father had acquired ownership under the registered sale deed. It is very likely that by getting his name inserted in the village form no.12, he may get some strength in the civil dispute filed by Chhana Dana. Keeping in view these facts and circumstances of the case, the Court is of the view that the version of the complainant gets corroboration from the complaint also which had led him to the office of the Talati-cum-Mantri and his request was responded well by the appellant on condition of payment of amount of Rs.500/-. This was the first demand made, as alleged, by the complainant.

7. In paragraph no.3 of the deposition Ex.23, the complainant has stated that when he requested to correct the village form no.12, the appellant had told him that if he is paid an amount of Rs.500/-, he will do that work. The complainant had offered him to pay that amount on Monday but he was asked by the appellant that on Monday, he will not be available at his residence and he

will be available at his residence only on Tuesday and, therefore, he should come and pay the amount on Tuesday. There is no material contradiction or improvements which are brought on record qua this part of evidence and in the same way, the evidence as to the demand made by the appellant for the amount asked for by him in the Manhar Tea Stall is also found having no infirmity or material contradiction or improvement. The learned trial Judge has referred to this evidence in paragraph nos.20, 25 and 26 of the judgment and order under challenge.

8. The learned trial Judge has considered the conduct of the complainant and his disinclination to pay any amount as bribe from the very beginning. It is possible to infer that the complainant must have consulted Arjun Bhima after the date and time of the first demand of bribe amount by the appellant, otherwise he had no reason to consult Arjun Bhima on this point or to go to Rajkot because there was no animosity between the complainant and the appellant. No suggestion in this regard has ever

been made to the complainant. There is nothing on record to show as to why the complainant should agree to become a scapegoat in the hands of Arjun Bhima because there is no evidence as to the existence of close or thick social ties between the complainant and Arjun Bhima, and in that background, the learned trial Judge has appreciated the evidence. So the argument advanced by Shri Shethna that the complainant ought not have been believed as a reliable witness on the point of demand is not found acceptable.

9. The learned trial Judge has also considered the defence taken by the appellant of planting of amount against the wish and will of the appellant. When it is not the case of the complainant that his deceased father had acquired the land under the valid title deed, or registered mortgaged deed, it appears that there must be an agreement to sale but it would not be legal or in favour of the complainant. But that village Form no.12 shows the name of Ramabhai Tapubhai since 1972-73. Thus, the complainant had gone to the appellant to get his name

reentered in village Form no.12 popularly known as 'Parnipatrak'. He had never claimed that his name should be entered in village Form No.8-A because he has stated in his deposition that he has requested the appellant to correct the name in 'Panipatrak'. Though it is claimed by the complainant that his family was enjoying the possession and cultivating the land originally owned by the father of Chhana Dana-owners and purchasers of the land. There is no legal evidence available on record as to the acquisition of the valid title of the land in question. In legal battle between the families, complainant's on one side and Chhana Dana's on the other, the name of the complainant if is found reflected in village Form no.12 in respect of the land in question, the complainant can satisfy the Court that in which capacity or status he is in possession of the land in question. The legitimate agriculturist if is not responded well by the village revenue officer i.e. Talati-cum-Mantri and if he is asked to pay a bribe amount of Rs.500/- which had good value in the year 1985-86, can take him to a decision that he shall not bow down to such

illegal demands and shall make a complaint in respect of the same. In the FIR, the Investigating Officer has obtained his thumb impression. It is rightly submitted by Shri A.J. Desai, learned Additional Public Prosecutor, that a rustic villager staying in a backward District or Taluka like Chotila, normally would behave in the manner in which the complainant has acted and reached to the office of the Assistant Director of ACB at Rajkot. This part of evidence has been rightly appreciated by the learned trial Judge, is the say of Shri A.J. Desai. The crucial question which was required to be answered by the learned trial Judge was that a person who was to fight a legal battle with Chhana Dana, whether would spoil the relation with the Talati-cum-Mantri of the village by forcibly planting the muddamal currency notes in his pocket. Failure of the trap arranged by the ACB would not have disturbed the legal scenario of the Civil or revenue dispute which were pending between the parties. Merely because the complainant and panch no.1 had not gone to the residence of the appellant, it would not be proper for the Court

to say that both of them were searching the appellant so that the muddamal currency notes can be planted in the pocket of the appellant or he could be handed over the muddamal currency notes stained with anthracene powder. The suggestions made during the course of cross-examination to the complainant in paragraph no.12 in reference to the evidence which had occurred at Manhar Tea Stall and to panch no.1 by the defence counsel are not identical or very much similar. It is suggested by the complainant that the appellant was given a slap by the ACB Inspector Shri Gor and the complainant was forced to put muddamal currency notes in the pocket of the appellant and prior to that the appellant had pushed or pulled the complainant with his two hands as he was not intending to accept the amount, was the suggestion made to the complainant. This suggestion has been denied. But the panch no.1 was suggested that when all the three i.e. complainant, appellant and panch no.1 had come out of the Manhar Tea Stall, whether the complainant tried to hand over the muddamal currency notes forcibly to the appellant and at that time, the appellant had

said that he does not want, even then the complainant was trying to hand over the currency notes. The suggestion made to the panch no.1 is of the nature that the whole incident had occurred outside the Manhar Tea Stall. In the statement under Section 313 of the Code of Criminal Procedure, 1973, the appellant has said that when they were proceeding towards a dispensary of Dr.Singhavi, the complainant tried to give the amount forcibly and he had refused to accept the same and at that point of time, the ACB Inspector had reached to the spot and the appellant was given one or two slaps and he had forced the appellant to accept the amount. The said police officer had also asked him to count the currency notes and, thereafter, the ACB Inspector had asked the appellant to put those currency notes in his pocket. So the suggestion made to the panch no.1 and the complainant materially differs from the stand taken by the appellant while placing his defence and explanation before the Court under Section 313 of the Code of Criminal Procedure, 1973 and in this background, the learned trial Judge has accepted the say of learned Additional Public

Prosecutor and the learned trial Judge held that the defence of the appellant of forcible planting of the muddamal currency notes in the shirt pocket is not accepted.

10. I do not find any merit in the arguments advanced by Shri Shethna on the point that the panchas ought not to have been selected from Rajkot, or they were selected from Rajkot because they can be kept under influence because it is the say of ACB Inspector Shri Gor that he has taken the complaint at the instance of Assistant Director of ACB at Rajkot, and he was supposed to proceed for laying down the trap. So it is rightly submitted by Shri A.J. Desai, learned Additional Public Prosecutor, that selection of panchas from the place other than Rajkot would make the prosecution case less reliable; and there was no scope for Shri Gor to go to Surendranagar, only for drawing the first part of panchnama at Surendranagar because it is in evidence that the village of the complainant is nearer to Rajkot within its district head quarter. The Court should not stretch the logic beyond probability that the trap was arranged

only with a view to implicate the appellant and, therefore only, Shri Gor was called all the way from Surendranagar to Rajkot and panchas were, therefore, selected from Rajkot.

11. It is true that the complainant has accepted that he had stayed at the residence of his acquaintance and with his help he had reached to the office of the Assistant Director of ACB. But basically he is an illiterate rustic villager and there is nothing as evidence to show that any close relative or a person known to him is well placed person either in the police department or in any other Government department. A fact is stated by the complainant that he went to Rajkot because Rajkot is nearer to his village. But it is also important that it has an office of the Assistant Director of ACB. So if a person from his village and a Talati-cum-Mantri had advised him that Rajkot would be a better place, then this conduct of the complainant would not create any circumstance under which it can be believed that the office of the Assistant Director of ACB was anticipating the visit of the complainant.

Shri Gor, Police Inspector ACB, has specifically stated that he was asked to be there in the office of the Assistant Director of ACB at Rajkot with the relevant material which is being used for carrying out an ACB trap, such as anthracene powder and/or ultraviolet lamp, its battery, etc. I do not find any logic that similar material available with Rajkot District ACB Office could have been used and there was no need to call Shri Gor with such instructions. It is true that in the present case, the anthracene powder at the office of the ACB at Rajkot could have been used in applying on the muddamal currency notes also. But as Shri Manjariya was to go to lay an ACB trap in the District Rajkot, the ACB Officer visiting the office of the Assistant Director of ACB, if is asked to come with the equipment, it should not be viewed with suspicion because Shri Gor has stated that he had gone to the office of the Assistant Director to discuss about some old cases and the Assistant Director of ACB was not there in the office on that day and he was waiting for him so that he could meet the said officer. So the visit of the complainant and Shri Gor on that

day appears to be a co-incident. However, each co-incident should not be viewed with doubts. The Courts are supposed to ascertain as to whether anything fishy is found from the facts emerging from record or not. Shri Manjariya, Police Inspector ACB, Rajkot, has stated that he was to accompany Shri Gor. The office of Shri Manjariya and the Assistant Director of ACB are in the same building. When Shri Manjariya met Assistant Director of ACB after 11-00 a.m., he was told by the Assistant Director of ACB that Shri Gor was to accompany him in an arranged trap but Shri Manjariya had already left. Shri Gor had carried with him two to three old cases and he had discussed those cases with the Assistant Director of ACB and that discussion continued upto 01-00 to 01-30 p.m. Some matters were to be investigated at Rajkot and he was to stay till evening at Rajkot and, therefore, he was in the office of the Assistant Director of ACB till evening, and as the complainant had met the Assistant Director of ACB, he was called directly. It has come on record during the course of cross-examination of this witness that he was sitting in the chamber of Shri Manjariya,

Police Inspector of ACB at Rajkot, from where Shri Gor was called by the Assistant Director of ACB and he was asked to take the complaint of the complainant, taking the complainant in the chamber of Shri Manjariya. Non-selection of panchas from Rajkot, on the contrary, would have raised doubt as to the presence of Shri Gor in the office of the Assistant Director of ACB and his visit to Rajkot. It appears that anticipating detailed answers, no cross-examination was made as to the purpose of visit of Shri Gor to Rajkot on that particular day. When in all ACB trap cases selection of panchas is considered to be a very important aspect, Shri Gor would not have taken any risk to select panchas either from Chotila, a Taluka town, after reaching there where the appellant-accused was residing or asking the complainant or any other person to arrange for panchas from District Surendranagar. Geographically, a person who wants to go to Surendranagar shall have to pass through Taluka Chotila and the main road is passing through town Chotila. So the Court is not inclined to accept the argument that Shri Gor was aware about the trap and visit of the

complainant in the office of the Assistant Director of ACB at Rajkot and, therefore, he was called at Rajkot. Merely because the complaint has been taken by ACB officer of Surendranagar and he has selected panchas from Rajkot would not make Shri Gor an unreliable witness. It is true that Shri Gor is a trap witness and can be termed as a partisan witness. But when his version gets corroboration from the complainant as well as the panch no.1 examined before the Court, the say of Shri Shethna to discard the evidence of ACB Police Inspector Shri Gor is not found accepted.

12. As per the evidence led by the prosecution, this is a case of clear cut demand of bribe amount on two different occasions. Firstly when the complainant approached the appellant with a request to make corrections in village Form no.12 and on second occasion, in the Manhar Tea Stall situated in town Chotila. As the theory of forcible planting is not found acceptable and the appellant has staid that he had taken the currency notes in his hands and they were put in his shirt pocket by him, of course, under the

threat and pressure of the police, it is possible to infer that this is a case of voluntary acceptance of amount because there is no force or reliability in the say of the appellant that he had accepted the amount from the complainant because he was beaten and forced to accept the amount to put in his pocket. There was no reason for Shir Gor to behave in the manner as suggested by the appellant under Section 313 of the Code of Criminal Procedure, 1973 on a public street and that too near the dispensary of a doctor. The time of 07-30 or 07-45 cannot be said to be a very late evening in a Taluka or Town like Chotila. If really such an event has occurred, the appellant could have led evidence in support of his say to rebut the presumption.

13. This is a case of demand and voluntary acceptance of the bribe amount by the appellant. Some inability to describe the type of steps which were seen by the complainant would not make the case of the prosecution doubtful. It is true that use of phenolphthalein powder is a good alternative and it is more reliable but it

is not the law of the land that in all cases where there is use of anthracene powder by the trapping officer, the second part of panchnama drawn should be viewed with doubt. Florescent reflection of marks seen is a suggestion of an abnormality and one can easily mark such a difference and the witnesses have satisfactorily narrated these details, is the finding recorded by the learned trial Judge. According to me, this finding of conviction is based on correct appreciation of evidence and other totality emerging from record and, therefore, it is not required to be reversed or otherwise altered.

14. Of course, before the learned trial Judge the point of validity of sanction was assailed and it was argued that the sanction has been granted mechanically and there is no evidence to show that it was accorded with proper application of mind. The documentary evidence placed before the Court are sufficient to prove that all relevant papers were placed before the competent authority and the competent authority before passing the order had even attempted to ascertain as to who has powers to accord the

sanction as requested by the prosecuting agency. This exercise undertaken by the District Panchayat Authority suggests that the authority before assigning letter of sanction had applied its mind from all the corners. In response to the query raised by the Court, Shri Shethna has fairly accepted that he is not heavily pressing the point of validity of sanction.

15. The material difference in the signature in Vakalatnama and other documents qua the signature allegedly made by the appellant in the seizure memo, pointed out by Shri Shethna is not found sufficient to discard the entire case of the prosecution because the signatures pointed out by Shri Shethna are in vernacular Gujarati language and it appears that the appellant had signed the seizure memo in English. The time, place and situation may have also affected the signature and the mood of the signatory. There is no other undisputed signature in English made by the appellant on record and therefore, it will be difficult for this Court to show that the evidence of ACB Inspector Shri Gor should not be accepted when the appellant had signed the seizure memo of all the articles mentioned

in the memo Ex.38. In the further statement of the appellant recorded under Section 313 of the Code of Criminal Procedure, 1973, when the appellant has accepted that the muddamal shirt produced before the Court is his shirt, the seizure of the very shirt should not be viewed with doubt. This shirt is shown as Article no.12 in the seizure memo Ex.38. When the appellant accepts that the muddamal currency notes were there in his pocket, of course as alleged by him, they were either planted or placed by him under the pressure of the police, but the fact remains that these currency notes were in the pocket for one or the other reason. According to the prosecution, they were there in the pocket as they were kept by the appellant after receiving it from the complainant as he was not aware about the trap arranged. In such a situation, why this Court should view the seizure memo Ex.38 with doubt merely because the signature of the appellant on it is in English and not similar to other signatures. It is not the say of the appellant that the muddamal currency notes were recovered from some other place and a false signature has been shown to

the Court as if his signature on a seizure memo; and actual muddamal currency notes were not with him when he was searched.

16. In view of above, the arguments/reply of Shri A.J.Desai, learned Additional Public Prosecutor, are that there is no infirmity or illegality in the finding recorded by the learned trial Judge so far as the judgment and order of conviction is concerned. The arguments advanced by Shri Shethna, so far as judgment and order of conviction is concerned, are not found acceptable and it is held that the judgment and order of conviction passed by the learned trial Judge holding the appellant-orig. accused guilty of the offence in question is legal and the same is not required to be reversed. It is not necessary for this Court to assign detailed reasons afresh in view of the above stated details and discussion. Adopting the reasons assigned by the learned trial Judge and as discussed above, it is held that the judgment and order of conviction recorded by the learned trial Judge is absolutely legal and no inference is called for.

17. So far as the arguments advanced by Shri Shethna, learned senior counsel appearing for the appellant-accused, on the point of quantum of punishment are concerned, this Court can alter the quantum of substantive sentence awarded by the trial Court. It is true that the trap was arranged in the month of September, 1986 and the trial was conducted in the year 1990. So, the trial has reached to its logical conclusion within 3½ years. But when the accused has remained on bail althroughout, then asking the appellant-accused to undergo imprisonment for one year after a lapse of about 20 years, would be too harsh. The Court is aware that the Apex court has observed that the pendency of the Criminal Appeal would not be a matter of much relevance in deciding the quantum of punishment and the Court should look into the gravity of the offence, but these observations are made normally in all heinous crimes or where the maximum punishment has been prescribed. So, by assigning one or the other reason, the Court should not be tempted to impose the punishment

less than the minimum prescribed. Under the old Act i.e. Act of 1947, no minimum punishment has been prescribed. So, the Court can reduce the quantum of punishment i.e. substantive punishment when the accused is to be asked to go to the prison after about 20 years of actual trap and after about 20 years from the date of conviction. The substantive punishment, therefore, if is reduced to R/I for One Month would meet the ends of justice, since the bribe amount is Rs.500/-. By now, the accused must have lost his job and on confirmation of conviction, he shall be deprived of all other benefits that a Government employee would normally get. Even his family would also not be entitled to any family pension. Termination from a Government job and that too with a stigma, is as serious as sentence of imprisonment. So, keeping these aspects in mind, if substantive sentence is reduced to R/I for One Month as aforesaid, that would meet the ends of justice. Hence, this Court is inclined to accept the arguments advanced by Shri Shethna for the

appellant-accused.

18. In view of above observations and discussion, the present appeal preferred by the appellant-accused is hereby partly allowed. The judgment and order of conviction under challenge dated 07th March, 1990, recorded by the learned Special Judge, Surendranagar, in Special Case No.2 of 1987, whereby the learned trial Judge has convicted the appellant-accused for the offence punishable under Section 161 of the Indian Penal Code and also under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, is hereby confirmed. The order passed by the learned trial Judge not to award separate sentence for the offence punishable under Section 161 of the Indian Penal Code is also confirmed and no separate sentence is awarded to the appellant-accused. However, the order of sentence is modified and reduced to the extent that instead of undergoing sentence of one year rigorous imprisonment and a fine of Rs.500/-, in default of making payment of fine to undergo simple imprisonment for three months for the offence punishable under Section 5(1)(d) read

with Section 5(2) of the Prevention of Corruption Act and the sentence of one year for the offence punishable under Section 161 of the Indian Penal Code, the appellant-accused is ordered to undergo rigorous imprisonment for one month. The sentence of awarding fine of Rs.500/- is not altered. However, as the appellant has already made the payment of amount of fine, there is no question of undergoing any sentence in default of making payment of fine.

19. The appellant-accused is on bail. The bail bond of the appellant shall stand cancelled on the day on which he surrenders before the concerned trial Court or on 22nd December, 2006, whichever is earlier. The appellant-accused is directed to surrender before concerned trial Court to serve out the sentence on or before 22nd December, 2006, failing which the trial Court shall issue a non-bailable warrant against the appellant-accused to secure the custody of the appellant-accused and he shall be sent to the prison to serve the sentence.

(C.K. Buch, J)

Aakar

***Note: There are three words in Gujarati language which are hand-written at page no.27 in the original judgment. The translation of each such word is followed by it in the bracketed portion.**